

EXHIBIT 5

In Re:
Marvel Entertainment Group, Inc.

Δ π EXHIBIT

Deponent: *Evaniel Expt*

Date: *12-6-10* Rptr. *cm*

WWW.DEPOBOOK.COM

Mark Evanier
October 12, 1999

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:
MARVEL ENTERTAINMENT GROUP, INC.;
THE ASHER CANDY COMPANY; FLEER CORP.;
FRANK H. FLEER CORP.; HEROES WORLD
DISTRIBUTION, INC.; MAUBU COMICS) Case No. 97-638-
RRM
ENTERTAINMENT, INC.; MARVEL)
CHARACTERS, INC.; MARVEL DIRECT)
MARKETING INC.; and SKYBOX)
INTERNATIONAL, INC.,)
Debtors.)
DEPOSITION OF MARK EVANIER
Tuesday, October 12, 1999
NEWLANDER & NEWLANDER
1138 WILSHIRE BOULEVARD, SUITE 200
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 482-1522

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Deposition of MARK EVANIER, taken by
Marvel Enterprises, Inc. at 2049 Century
Park East, Suite 2350, Los Angeles,
California, commencing at 11:35 a.m.,
Tuesday, October 12, 1999, before
Laura L. Gray, C.S.R. No. 4194, and
Gerrilyn Strosnider, C.S.R. No. 4128.

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APPEARANCES OF COUNSEL:
ON BEHALF OF MARVEL ENTERPRISES, INC.:
BATTLE FOWLER LLP
BY: DAVID FLEISCHER, ESQ.
75 East 55th Street
New York, New York 10022
ON BEHALF OF MARVIN A. WOLFMAN:
THE LAW FIRM OF KLEINBERG & LERNER, LLP
BY: MICHAEL R. DILIBERTO, ESQ.
ADRIAN R. ASKARIEH, ESQ. (As Noted)
Suite 1060
2049 Century Park East
Los Angeles, California 90067-3112

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APPEARANCES OF COUNSEL: (Cont'd)
ON BEHALF OF NEW LINE CINEMA:
LEOPOLD, PETRICH & SMITH
BY: LOUIS P. PETRICH, ESQ. (As Noted)
Suite 3110
2049 Century Park East
Los Angeles, California 90067-3274
ALSO PRESENT:
MARVIN A. WOLFMAN (As Noted)

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EXHIBITS
EVANIER
EXHIBIT NO. DESCRIPTION PAGE
1 Deposition notice (10 pages) 5
2 Marvel Comics Group voucher
(1 page) 10

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EXHIBIT NO. DESCRIPTION PAGE
3 Letter from Mark S. Evanier to
Western Publishing Company, Inc.
(1 page) 13
4 Document titled "Artwork Release"
dated 6/14/79 (1 page) 13
5 Document titled "Assignment"
(10 pages) 15
6 February 20, 1987 letter on Marvel
Entertainment Group letterhead from
Joseph A. Calamari to Mr. Jack Kirby,
with attachment (11 pages) 16
7 Document titled "Acknowledgement Of
Copyright Ownership" (2 pages) 17
8 Complaint and second amended
complaint in Simon vs. Goodman,
et al. (14 pages) 19

EXHIBIT NO. DESCRIPTION
9 Document titled "Expert Report On
Mark Evanier" (9 pages) 21
10 Copy of a portion of "The Art of
the Comic Book, an Aesthetic
History" (12 pages) 200
11 Copy of a portion of "The Comics
Journal" (41 pages) 213
12 Copy of a portion of "The Comics
Journal" (9 pages) 259

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(1) MARK EVANIER,
(2) having been duly sworn, (3) was
examined and testified as follows:

(5) EXAMINATION

(6) BY MR. FLEISCHER:

(7) Q: Mr. Evanier, would you state your
address (8) for the record, please.

(9) A: 6282 Drexel Avenue, D-r-e-x-e-l,
Avenue, (10) L.A., 90048.

(11) Q: How old are you, sir?

(12) A: 47.

(13) MR. FLEISCHER: Let me ask the re-
porter to (14) mark for identification as
Evanier Exhibit 1 a photocopy (15) of a
deposition notice dated September 24,
1999.

(16) (Evanier Exhibit No. 1 (17) was mrk'd
for identification.)

(18) BY MR. FLEISCHER:

(19) Q: Mr. Evanier, have you ever seen a
copy of (20) what we've marked as
Exhibit 1?

(21) A: I believe this is a copy of a
document (22) that I was given, yes.

(23) Q: Directing your attention to page 8
of the (24) document, there are a series of
numbered paragraphs (25) requesting
documents. Did you review your files for
the

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(1) purpose of ascertaining whether you
had any documents (2) responsive to the
numbered paragraphs in the document
(3) request?

(4) A: Could I have that one more time?

(5) Q: Did you review your records,
wherever you (6) keep them, to deter-
mine whether you had in your (7)
possession or control any documents
that fell into the (8) categories requested
in paragraphs 1 through 17 of the (9)
document request?

(10) A: Yes, I did.

(11) Q: And did you bring them with you
today?

(12) A: I brought the material I under-
stood was (13) covered, yes.

(14) Q: Okay. May I see it, please.

(15) MR. DILIBERTO: This is an original
we'd (16) like to have back, but I have
made a copy for you, which (17) is in here.

(18) MR. FLEISCHER: Okay. (19) Off the
record a second.

ff-the-record discussion.)

(21) MR. FLEISCHER: Let me mark for (22)
identification as Evanier Exhibit 2 a
photocopy of a (23) document that has a
voucher number of 125733 at the (24)
upper right-hand corner and the docu-
ment control number (25) WOLF 239 in
the lower right-hand corner.

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(1) (Evanier Exhibit No. 2 (2) was mrk'd for
identification.)

(3) BY MR. FLEISCHER:

(4) Q: Mr. Evanier, how did you come into
(5) possession of Exhibit 2?

(6) A: When I was working for Marvel in
the (7) Eighties, I was sent a pile of these,
of which this is (8) one copy of many
duplicates.

(9) Q: I notice that the document has a
control (10) number in the lower right-
hand corner. Was the control (11) number
placed on the document after you fur-
nished it to (12) Mr. Wolfman's counsel?

(13) A: Yes, it was. When you asked me
how did I (14) come into possession of
this, I was referring to the (15) document
that was xeroxed, not the document that
you (16) handed me.

(17) Q: Right. You were referring to the
(18) original.

(19) A: Correct.

(20) Q: And are you able to tell us when
for the (21) first time you received a
document in the form of (22) Exhibit 2
from Marvel?

(23) MR. DILIBERTO: Objection. Vague
and (24) ambiguous.

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(1) BY MR. FLEISCHER:

(2) Q: Do you understand the question?

(3) A: What do I do now?

(4) Q: You can answer.

(5) A: All right.

(6) Q: Throughout the deposition, you
will hear (7) objections.

(8) A: All right. Ask me again, please.

(9) MR. FLEISCHER: Would you read it
back, (10) please.

(11) (The record was read as follows:

(12) "Q. And are you able to tell us (13)
when for the first time you received a (14)
document in the form of Exhibit 2 from
(15) Marvel?"

(16) BY THE WITNESS:

(17) A: I received it at some point in the
early (18) to mid Eighties.

(19) BY MR. FLEISCHER:

(20) Q: Do you remember in connection
with what (21) work, if any, you received
the first document of this (22) type?

(23) A: No.

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October 12, 1999

[14] profit-sharing plan - I take that back. It would be a [15] royalty provision, which was similar to the [16] profit-sharing plan that Western Publishing had in the [17] Sixties and into the Seventies, but DC had not similarly [18] had that across-the-board plan for anyone who created [19] new property for them or who was doing a comic that sold [20] over a certain level.

[21] Q: Any other changes between those two [22] periods that you are aware of?

[23] A: There were many changes, as there continue [24] to be changes in the business constantly as different [25] deals are made and as different contracts are made. I'm

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[1] not sure - If you could ask me a more specific [2] question, I'll try to give you a more specific answer.

[3] Q: I'm not referring to specific transactions [4] between a specific writer and a specific company. I'm [5] trying to ascertain whether it is your understanding [6] that on an industrywide basis there were material [7] changes in the way the rights to comic book materials [8] were handled by comic book publishers before 1978 and [9] after 1978.

[10] A: Okay. Yes. I understand now. Thank you. [11] In the latter period - not necessarily [12] immediately after 1978, but in the period that you're [13] describing, there was much more reliance on written [14] contracts, deal memos in advance of doing the work, [15] allowing lawyers to consult on comic book company [16] contracts, agents. There actually were agents that - [17] I never heard prior to '78 of anyone having an agent [18] represent them in a negotiation with a comic book [19] company, but that happened later on.

[20] There were new contracts and new language [21] we had never seen before, some of which I believe was [22] retroactively trying to acquire rights to materials [23] created prior to 1978.

[24] Q: Anything else?

[25] A: They started printing on different paper

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[1] stocks a lot during the Eighties. Comic books were more [2] distributed by a method called direct distribution, [3] which sold the comics on a non-returnable basis to comic [4] book shops as opposed to selling them through what were [5] called ID distributors which put them on newsstands on a [6] returnable basis.

[7] There was more emphasis on credits, on [8] artists and writers having their names prominently [9] displayed on their works in the Eighties. There were [10]

more cases of artists retaining creative control over [11] their work. There were more cases of people making [12] deals where they held the copyrights to their [13] characters.

[14] There were more cases where people were [15] working in even a wider variety of methods for [16] individual companies. That is to say that there was [17] less reliance on any given company on one way of doing [18] comics. I think the business matured in that they were [19] willing to tolerate even more creative variance. People [20] got to write about more adult-subject material [21] sometimes, they got to be more experimental in the [22] artwork, they began experimenting with computer [23] lettering and computer coloring that had not existed [24] before '78.

[25] It's a very different - The industry

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[1] every year or so is different from, you know, the years [2] before.

[3] (Mr. Askarieh left the room.)

[4] BY MR. FLEISCHER:

[5] Q: Specifically with respect to the ownership [6] of copyright, were there any changes in the industry of [7] which you were aware that occurred after January 1 of [8] 1978?

[9] A: Some of the companies became more willing [10] to make deals in which the artist or writer or some [11] combination thereof held the copyright to material than [12] they had been before.

[13] Q: Focusing on the mainstream publishers that [14] you identified earlier, what was the position of DC on [15] the ownership of copyright prior to 1978?

[16] A: I don't know.

[17] Q: What was the position of Marvel?

[18] A: I don't know that there ever was a clearly [19] stated position.

[20] Q: What was the position of Western?

[21] A: I don't know what their position was.

[22] Q: What was the position of Archie?

[23] A: I don't know what their position was.

[24] Q: What was the position of Harvey?

[25] A: I don't know what their position was.

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[1] Q: What was the position of Charlton?

[2] A: I don't know what their position was.

[3] Q: What was the position of Print Mint?

[4] A: Print Mint, generally I believe the [5] artists usually held the copyrights on their work.

[6] Q: And how did you come to that [7] understanding?

[8] A: Looking at Print Mint comics and seeing [9] the copyright notices.

[10] Q: And in your view, Print Mint was a [11] mainstream publisher prior to 1978?

[12] A: Well, by my definition, it would be. They [13] certainly sold an awful lot of comics. I'm basing [14] "mainstream" on sales figures.

[15] (Mr. Askarieh returned to the room.)

[16] BY MR. FLEISCHER:

[17] Q: By order of magnitude, what would you say [18] that Print Mint's total comic book sales in 1977 were as [19] compared with those of either DC or Marvel?

[20] A: I don't know. The sales figures in the [21] comic book industry at that time were generally [22] considered to fall into two categories: secrets and [23] lies.

[24] Q: I thought you numbered Print Mint among [25] the mainstream publishers because of your understanding

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[1] of their sales.

[2] A: Yes.

[3] Q: So what was your understanding of their [4] sales?

[5] A: My understanding of their sales was that [6] they sold an awful lot of comic books that were around [7] on an awful lot of racks.

[8] Q: What do you mean by "awful lot of comic [9] books"?

[10] A: They published a substantial number of [11] comics. I can't quote you accurate sales figures here [12] because the sales figures in the business have long been [13] kept very secretive or, when they were published, [14] rumored to have been completely inaccurate. But we [15] heard stories of individual Print Mint titles selling [16] 200, 300,000 copies.

[17] Q: Which titles were those?

[18] A: I can't give you the names off-hand. I [19] believe they published Zap Comix for a while. I believe [20] they published a couple of ghost, monster-type comics. [21] I don't really know.

[22] Q: What was the name of the comic that you [23] saw the copyright notice on that led you to believe that [24] the practice of Print Mint was to leave the copyright [25] with the writer?

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[1] A: I can't cite a specific one. I just [2] always saw copyright notices in Print Mint comics.

[3] Q: And what did the copyright notices in [4] Print Mint comics say that you recall?